Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1974

THROUGH MARCH 31, 1974

WILLIAM J. BAXLEY, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From January 1, 1974

Through March 31, 1974

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1974, through March 31, 1974, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. The section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY
Attorney General

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January 7, 1974

Honorable Cartledge W. Blackwell, Jr.
Attorney for and Legal Adviser to the
Dallas County Commission
Selma, Alabama 36701

Counties: Funds:
Appropriation to combat illegal use of narcotics
Title 12, Section 12, Subsection 19, Code of Alabama 1940
Recompiled 1958, as amended.

Opinion by Assistant Attorney General Lurie

Dear Mr. Blackwell:

Your request of December 29, 1973 for an official opinion of this office is as follows:

"As Attorney for and Legal Adviser to the Dallas County Commission, I am requesting your Opinion giving me answers to the questions hereinafter set forth in this letter:

"1. Does the Dallas County Commission have the authority to make an appropriation to a private organization for use to maintain and operate a drug use and/or abuse counseling program (for the maintenance and care of persons with drug use problems), it being required of the organization by the Commission that said funds be used to provide such services or program to indigent persons with a priority to indigent citizens of Dallas County?

"2. If the answer to question 1 above was answered in the negative, would the Dallas County Commission have the authority to appropriate funds to a private organization for the same purpose and uses as set out in question 1 above, if (1) the controlling membership of the organization's controlling committee is appointed by the Dallas County Commission and the City of Selma (each governing body appointing a certain number of members of the said controlling committee), and (2) the organization were required to periodically account for and report to said governing bodies respecting the use and expenditure of the public funds appropriated to it?

"3. If the answer to questions 1 and 2 above were answered in the negative, would the Dallas County Commission have the authority to appropriate funds to a private organization for use as outlined in questions 1 and 2 above if the State Board of Health or State Board of Mental Health requested the Commission to do so? (I call your attention to Subsection 19, Section 12, Title 12, Code of Alabama of 1940 (Recomp. 1958)."

The most authoritative and least difficult method of contributing to the solution of the narcotic problem in your County is pursuant to the provisions of Title 12, Section 12, Section 19, Code of Alabama 1940, Recompiled 1958, as amended, as you have cited in your request. The appropriation of county funds for health purposes, upon the request of the State Board of Health, would necessarily presuppose a condition which warrants compliance with the statute cited.

This answer, in response to your third question, obviates the necessity to answer questions one and two.

It is hoped that your County will be able to successfully combat the awful evils caused by drug abuse and we wish you every success to that end.

Yours very truly,
WILLIAM J. BAXLEY
Attorney General

January 22, 1974

Honorable E. A. Grouby
Judge of Probate
Probate Court, Autauga County
Prattville, Alabama 36067

Counties-Roads:

County may compensate landowner for property damage caused by collapse of county-owned and maintained road.

Opinion by Assistant Attorney General Van Tassel.

Dear Judge Grouby:

Your request for an official opinion dated November 8, 1973, is as follows:

"Please furnish me your official opinion on the following:

"1. If a hundred feet of paved road is undermined by soapstone and slides down a hill 200 or 300 feet, undermines the adjoining property and several hundred feet of an individual's property also slides down, ruins his fence and dries up his well, doing him several thousand dollars of damage, may the county commission compensate him for same?

"2. The slide covers up about 5 acres of another party's property and the drainage from the slide damages his fish pond and fills it with mud and gravel, may the county commission legally compensate this party for damages?
"We know that this would be done by an act of the legislature if it was State property, it could be handled by the Adjustment Board.

"The question we want answered is, can the county legally pay for these damages?"

Title 7, Section 96, Code of Alabama 1940, Recompiled 1958, provided that suit may not be brought against a county until the claim has been presented to the Court of County Commissioners, and disallowed or reduced by them. This would seem to lead to the conclusion that the county does have the right to make settlements on claims brought against it. Title 12, Section 12, Code of Alabama 1940, Recompiled 1958, as amended, provides in part 4 thereof that the Court of County Commissioners has the authority to examine, settle, and allow all accounts and claims chargeable against the county.

In view of the foregoing, it is my opinion that the county may, after a proper hearing, pay a settlement to the landowners whose property has been injured due to the fault of the county.

I hope that the above has answered your questions. If this office may be of any assistance to you in this or any other matter, please do not hesitate to call upon us.

Sincerely yours,

WILLIAM J. BAXLEY
Attorney General

January 25, 1974

Honorable Robert S. Vance
Chairman, Democratic State Executive Committee
Suite 933
Frank Nelson Building
Birmingham, Alabama

and

Honorable J. Richard Bennett
Chairman, Republican State Executive Committee
P.O. Box 3315
Birmingham, Alabama

Explanation of the Provisions of the
Alabama Corrupt Practices Act

Opinion by the Attorney General

Dear Gentlemen:

In your respective official capacities as Chairman of the Democratic and Republican State Executive Committees you have requested an opinion on several questions relating to the application of Alabama's Corrupt Practices Act to the 1974 Democratic and Republican Primaries and to the 1974 General Election. I will restate and respond to each enumerated question separately.

"1. What information regarding the solicitation, receipt, expenditure and disbursement of funds must a candidate file? With whom and at what time must this information be filed?"

Each candidate's designated committee, or the candidate himself if he has elected to act as his own committee, must file a detailed, itemized statement of **all** contributions received and **all** expenditures made. This required statement must include the following items:

(a) a listing of all gifts, loans or contributions made to the committee;

(b) the names of all contributors of amounts in excess of ten dollars with the amount given by each;

(c) a listing of all obligations, debts or liabilities assumed or incurred:

(d) an itemization of all monies expended and, with respect to expenditures in excess of five dollars, the names of persons to whom such monies were paid, the purpose for which it was expended and, if for a service, by whom such service was performed.

It should be noted that expenditures for newspaper, radio and television advertising must be included in this disclosure statement although such expenditures are not considered in determining the total expenditures for purposes of complying with the expenditure limitations imposed by the Corrupt Practices Act. Code of Alabama, Title 7, §279. I can see that in the past, because expenditures for newspaper, radio and television are not included in the expenditure limitations, many people might have honestly thought that those expenditures need not be reported. However, it is quite clear from the wording of Section 279 that **all** expenditures, including expenditures for newspapers, radio and television, must be reported.

Attached to this statement must be an affidavit subscribed and sworn to by the treasurer of the filing committee, or the candidate himself if he has designated himself as the committee, affirming that the statement is in all respects true and that it is a full and detailed statement of all monies, securities or equivalents for money coming under the control or custody of the committee and by them expended directly or indirectly. Code of Alabama, Title 17, §279.

There shall also be attached an affidavit subscribed and sworn to by the candidate affirming that the statement is, to the best of his knowledge and belief, in all respects true, and that he has not in person made any expenditures or received any contributions which are not set forth in the statement.

If the candidate has designated himself as his committee he may incorporate both of the above affirmations into one affidavit. Code of Alabama, Title 17, § 280.

This statement must be filed within fifteen days after a primary election* and within thirty days after a general election for which such expenditures are made. Depending upon the office to which the candidates seeks election, the statement must be filed in one of the following places:

(a) in the office of the judge of probate of the county in which the candidate resides, if such candidate is a candidate for state senator, representative in the legislature, or for any county office or position; or

(b) in the office of the Secretary of State, if the candidate is a candidate for a national or state office or position or for representative in Congress or for judge or solicitor of any judicial circuit.

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* With respect to the filing date it should be noted that, while the Corrupt Practices Act (in Title 17, Code of Alabama, §279) requires filing of the disclosure statement within **30** days after a primary, general or special election, the Primary Election Law (in Title 17, Code of Alabama, §400) requires filing of a similar statement within **15** days after a primary election. Thus, technically two statements are required after a primary election. However, if the statement required by the Corrupt Practices Act is filed within 15 days after the primary election, both the provisions of the Corrupt Practices Act and the provisions of the Primary Election Law will be satisfied with one statement.

Candidates for municipal office and candidates who are not opposed for nomination or election are not required to file this statement. Code of Alabama, Title 17, §§278, 279; **State v. Bates,** 233 Ala. 251, 171 So. 370.

"2. May more than one committee solicit, receive, expend, or disburse funds in support of or in behalf of a candidate?"

No. Each candidate must, within five days after announcement of his candidacy,* designate a committee of not less than one nor more than five persons to receive, expend, audit and disburse all monies contributed or raised for the purpose of aiding or promoting the nomination or election of such candidate. This designation must be made by written statement naming the designated persons and must be filed, together with written acceptances or consents from the designated persons, as follows:

(a) each candidate for state office must file with the Secretary of State;

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* An announcement of candidacy in a primary election is made when the candidate files his official declaration of candidacy in the form

prescribed by the governing body of the party. Jones v. Phillips, 274 Ala. 354, 185 So. 2nd 378. With respect to a general election, announcement of candidacy occurs at the time of the filing of the certificate of nomination. **Hadnott v. Amos,** 320 F. Supp. 107 (M.D. Ala. 1970), aff'd. 401 U.S. 968, 91 S. Ct. 1189, 28 L.Ed. 2d 318 (1971).

(b) each candidate for a county office or the State House of Representative must file with the judge of probate of the county or counties in which election is sought;

(c) each candidate for a circuit or district office must file with the judge of probate of each county which is embodied in said circuit or district.

This designated committee shall have exclusive custody of all monies contributed or otherwise furnished or raised for or on behalf of the candidate represented. No candidate may expend any money, directly or indirectly, in aid of his nomination or election except by contributing to the committee which he has designated.

Moreover, no other person or committee may make any expenditures for or on behalf of a candidate except by and through the committee designated by that candidate. Code of Alabama, Title 17, §§274, 277. However, an expenditure by another person in violation of this requirement will not be attributed to the candidate himself **(State v. Bates,** 233 Ala. 251, 171 So. 370) but will be an illegal act by the person making such expenditure.

"3. What are the limitations on the amounts a candidate may spend in behalf of his candidacy?"

The amount that a candidate may expend in behalf of his candidacy varies depending on which office is being sought. The amount that may be expended by the candidate for each of the various offices and categories of offices, exclusive of the amount expended for radio, television and newspaper advertising and the qualifying fee, is set out in Code of Alabama, Title 17, §272, as follows:

(a) for the office of the United States Senator—$50,000;

(b) for the office of Governor—$50,000;

(c) for any other state elective office—$10,000;

(d) for the office of United States Congressional Representatative—$10,000;

(e) for the office of State Senator—$1,000 or $600 per county forming a portion of his or her Senatorial district;

(f) for the office of State Representative—$600;

(g) for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof—

(1) if the total number of votes cast for all candidates for governor in the last preceding state primary election and in also the last preceding state general election was **less than** five thousand votes—$3,000, or;

(2) if the total number of votes cast for all candidates for governor in either the last preceding state primary or in the last preceding state general election was **more than five thousand** votes—$3,000 plus $10 per 100 votes cast in excess of five thousand votes;

(h) for the office of presidential elector—$300;

(i) for the office of delegates to the national convention of any party—$600;

(j) for the office of delegate to the state, county or district convention of any party—$200;

(k) for the office of chairman or national committeeman of any political party—$5,000;

(l) for any other office—$500.

As previously indicated, the above limitations do not include the amount that may be expended for radio, television and newspaper advertising. There is no limitation on such expenditures.

The limitations listed above apply only to expenditures by the candidate himself. Expenditures made by the candidate's committee from contributions or sources other than the candidate are not considered expenditures by the candidate for the purposes of determining compliance with these limitations. This is true even if the candidate designates himself as his financial committee pursuant to Code of Alabama, Title 17, §§274 and 275.

In other words, a candidate may not **personally** spend more than the amount indicated above. For example, a candidate for governor may not spend more than $50,000 of his own money.

"4. What are the limitations, if any, on the funds which may be expended by a party organization or by an undesignated committee formed to support a single candidate?

There is no limitation on the amount of money which may be expended by anyone other than the candidate himself. However, any monies expended by a party organization or by an undesignated committee must be contributed to the candidate's designated committee and expended by and through the designated committee and such contributions to the candidate's designated committee must be reported by the party organization or other undesignated committee. Code of Alabama, Title 17, §277.

I personally think that this is bad law and should be changed. I believe that, for example, a political party should be able to spend

money directly to advertise in support of party candidates and should not be limited to making contributions to individual candidate's committees. This, in fact, has been the practice in Alabama. However, Section 277 of the Corrupt Practices Act is very clear in requiring that all expenditures on behalf of a candidate must be made through his designated committee.

Also, every "political committee", whether it be a party organization or otherwise, must file a disclosure statement just like that required of designated committees and as described in the answer to question 1 above, except that such statement may be filed within 30 days, rather than 15 days, after a primary election and such statement need not have attached a candidate's affidavit. A political committee is defined to be:

> "Any one or more persons who shall be elected, appointed, chosen or associated for the purpose wholly or in part of directing the raising, collection or disbursement, and every two or more persons who shall co-operate in the raising, collecting, or distribution, or in controlling or directing the raising, collecting or disbursement of money used or to be used to further or defeat the nomination or election of any person, or any class or number of persons to public office by popular vote, or in support of or in opposition to any measure or proposition submitted to popular vote, . . ." Code of Alabama, Title 17, §268.

> "5. In the reporting of campaign contributions and expenditures, must the receipt and use of services and goods other than money be reported?"

Yes. **All** gifts, loans, or contributions of any nature must be reported including gifts of services, facilities, equipment, fixtures, materials, etc., or the temporary use of such facilities, equipment, fixtures, materials, etc.

> "6. Are the limitations on campaign expenditures applicable separately to the first primary, second or runoff primary and the general election or are such limitations cumulative as to these three elections?"

The limitations are applicable separately to each election.

> "7. For what purpose may campaign funds be expended and what expenditures, if any, of campaign funds are prohibited?"

The purposes for which campaign funds may be expended are listed in Section 271 of the Corrupt Practices Act and in Section 393 of the Primary Election Law. For some unknown reason the law is different for a second primary than it is for the first primary and the general election.

For all elections, campaign funds may be expended only for the following items:

(a) the candidate's traveling expenses while campaigning:

(b) any qualifying fee required;

(c) stenographic work;

(d) clerks at the candidate's campaign headquarters to address prepare and mail campaign literature;

(e) telegrams, telephones, postage, freight, express, stationary;

(f) a list of voters;

(g) office rent;

(h) newspaper, radio and television advertising;

(i) preparation, printing and publication of posters, lithographs, banners, notices and literary material, reading matter, cards and pamphlets;

(j) the compensation of agents to supervise and to prepare and distribute such articles and advertisements;

(k) the hire of bands or musicians; and

(l) the reasonable traveling expenses of the candidate's agents, clerks and speakers. Code of Ala., Title 17, §271.

However, from the time the first primary is held until the polls close on the day of the second primary, campaign funds may be expended only for the following items:

(i.) the candidate's personal traveling expenses including his personal hotel, telegraph, telephone and restaurant bills;

(ii.) the costs of giving publicity to his candidacy in news papers, over radio and television, by correspondence, or by printing and publication of posters, lithographs, banners, notices and literary material, reading matter, cards and pamphlets tending to advertise such candidacy. Code of Ala., Title 17, §393.

I do not understand the reason why the law imposes different restrictions on expenditures for a second primary than it imposes on expenditures for a first primary or general election. I think the difference in the laws is absurd. For example, a candidate can hire a band for the first primary but not for the second primary.

However, as ridiculous as the law may be, it is clear. Any expenditure other than for the purpose listed above is unlawful.

"8. Are there any persons, firms or corporations from which campaign contributions cannot be solicited or accepted?"

Yes: Campaign contributions may not lawfully be solicited or accepted from the following:

(a) any business corporation incorporated under the laws of, or doing business in, Alabama or any officer or agent acting in behalf of such corporation;

(b) any corporation or any person or trustee owning or holding a majority of stock of a corporation carrying on the business of a bank, savings bank, trust, trustee, savings, indemnity, safety deposit, insurance, railroad, telephone, telegraph, gas, electric light, heat or power company or any company having the right to condemn land or to exercise franchises in public ways granted by the state, county, city or town. Code of Ala., Title 17, §286.

"9. What are the penalties for violation of the Corrupt Practices Act and what persons are subject to these penalties?"

The penalty for a violation of the Corrupt Practices Act is left to the discretion of the Court and the Court must impose a fine of not more than five hundred dollars and may impose a jail term of not more than six months. Code of Ala. Title 17, § 332.

The above stated penalty may be imposed for the following violations upon the persons identified:

(a) failure to designate committee — the candidate;

(b) expenditure for item other than those listed in answer to question 7 above — the candidate or committee members;

(c) expenditure other than through designated committee — the candidate or other person making such expenditures;

(d) expenditure in excess of the prescribed limitations — the candidate;

(e) failure to file the required statement within 30 days after an election — committee members.

(f) solicitation or acceptance of funds from prohibited sources — the person or persons so soliciting or accepting;

(g) failure to properly mark campaign advertisements or literature—committee members or other person causing such advertisements or literature to be published.

(h) failure to perform any other act required, or the performance of any act prohibited, by the Corrupt Practices Act—the person or persons charged with the duty and failing to perform such duty or the person or persons performing such prohibited act.

Also, under the Primary Election Law a candidate may be fined not less than one hundred nor more than one thousand dollars for failure to file the required disclosure statement within 15 days after the primary election. Code of Ala., Title 17, §400.

In addition, the candidate may be subject to the following non-criminal penalties under the Corrupt Practice Act:

(i) if the candidate fails to file the required committee designation, his name shall not be placed on the ballot;

(ii) if the candidate and his designated committee fail to file the required disclosure statement within 30 days after the election, no certificate of election or nomination shall issue to the candidate; and

(iii) If a candidate expends an amount in excess of the limitations imposed by the Corrupt Practices Act, he shall be disqualified for the office to which he is seeking election. Code of Ala., Title 17, §§ 275, 281, 273.

(Note: See the answer to question No. 3 above for the amount which a candidate may spend.)

"10. What information must be placed on campaign literature and advertisements?"

All campaign literature and advertisements, including newspaper, radio and television advertisements, must bear upon its face the name and address of the person or committee causing it to be published. Additionally, all political advertisements appearing in newspapers must be marked to identify them as paid advertisements. Code of Ala., Title 17, §§ 282, 283.

"11. Are the provisions of the Corrupt Practices Act applicable to both candidates for public offices and candidates for political offices?"

Yes.

In conducting political campaigns in compliance with the Corrupt Practices Act as explained above, the members of your respective parties and others should ever bear in mind that the purpose of the Corrupt Practices Act is to promote fair, honest and open elections in the State of Alabama and that, if furtherance of that purpose, complete disclosure and candor is required. Candidates and campaign agents should be careful and conscientious about complying with the law and all questions concerning acts required or prohibited by the law should be resolved in consonance with the spirit of the law. Candidates and campaign agents should avoid even the appearance of impropriety.

I hope and trust that the above answers will be helpful to you and to the members of your respective parties and others who may be involved in the next elections. I further hope and trust that a better

understanding of the law by those involved in the political processes will result in the fair, honest and open elections which the people of Alabama deserve and demand.

Thank you each for your interest in this matter and for your assistance in promoting better understanding of, and compliance with, the State Corrupt Practices Act.

Sincerely,

WILLIAM J. BAXLEY
Attorney General of the
State of Alabama

January 31, 1974

Honorable Charles A. Boswell
Commissioner of Revenue
State Department of Revenue
Montgomery, Alabama 36104

SOLICITOR'S FEES—

Under the provisions of Title 11, Sections 85 and 86, Code of Alabama 1940, no solicitor's fee is due to be paid in misdemeanor cases where the solicitor, or district attorney, or one of his assistants, does not appear or prosecute the case, whether the plea be one of guilty or not.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, dated October 25, 1973, is as follows:

"I would like to request an official opinion from you concerning the solicitor's fees which are provided for in Title 11, Section 85, Code of Alabama 1940, Recompiled 1958, and particularly as relating to misdemeanor cases in county or inferior courts as is provided in Title 11, Section 86, supra.

"The Department of Revenue makes cases acting through its enforcement officers in county and inferior courts in all of the counties in this State for violations of the motor fuel laws and the motor vehicle license laws, among other revenue laws, under the provisions of Title 51, Code of Alabama 1940, Recompiled 1958. All of such violations are misdemeanors.

"In most of such cases the alleged violators have, upon being apprehended, pled guilty to the charges, and have been fined on the average of about $10 for a first offence, plus the costs,

all of which usually totals about $40. As neither the District Attorney nor any of his assistants are ever present where such guilty pleas are entered, it has not been the practice to tax the defendants with the solicitor's fee of some $30, as is provided in misemeanor cases involving the revenue laws under Section 85, when read with Section 86. However, it is my information that the Examiner of Public Accounts is now raising the point that the solicitor's fee is due to be collected in such cases under Sections 85 and 86, regardless of the fact that neither the District Attorney nor any other prosecuting attorney is ever present.

"In regard to misdemeanor cases under Title 11, Section 81, where the violations are under the Game and Fish Laws under Title 23 and the Rules of the Road under Title 36, and where the counties involved do not have a population of 400,000 or more, and the defendants plead guilty, no solicitor's fee is required or is to be collected. No such exceptions are provided for as to the Revenue Laws under Title 51. However, see the opinion reported in Quarterly Report of the Attorney General, Vol. 113, page 48, which relates to violations as to requirements concerning cab cards under the motor fuel laws. "In at least two opinions issued by your office in the past, it was held that the citation fee provided for under Title 51, Section 835, in license cases, where the license inspector did not serve a citation on the deliquent, would not be due under the circumstances. See Quarterly Reports of the Attorney General, Vols. 25 and 30, page 119 and 41, respectively, and also **Henry v. Drennen Motor Car Co.,** 235 Ala. 559, 180 So. 563. Could there be some analogy between those situations and the circumstances related in this request?

"My question is, does the solicitor's fee under Title 11, Sections 85 and 86, supra, apply in such misdemeanor cases made under the Revenue Laws in the county or inferior courts where the defendants plead guilty and are fined by the court without the District Attorney or any other prosecuting attorney being present or participating in any other way?"

As this question is one of alleged wide public interest, which will affect the assessment of costs in most county and inferior courts in this State, the Honorable Doyle W. Chambers, Clerk of the Court of General Sessions of Mobile County, has requested that he be allowed to file a memorandum and supplement to the above request for an opinion concerning the subject matter as made by the Commissioner of Revenue. Mr. Chambers' very helpful memorandum and supplement in this respect, received on November 12, 1973, is as follows:

"A question has been presented to the Attorney General's Office by the Department of Revenue in regard to whether Solicitor's Fees under Title 11, Section 85 and 86 apply in misdemeanor cases before an Inferior or County Court where the defendants

plead guilty and are fined by the court without the District Attorney or any other prosecuting attorney being present or participating in any way.

"Any opinion rendered in answer to this question will undoubtedly affect directly most Intermediate Courts in the State of Alabama. Therefore, this writer feels it necessary to provide comment in regard to the question.

"The Court of General Sessions of Mobile County was created by Act. No. 40, Acts of Alabama 1956, amended by Act 1803, Acts 1971. The fee schedule and costs are set out in Section 10 of said Act.

"The practice followed in this court, as I am sure it is in many other Inferior and Intermediate Courts, is to follow pleas of guilty at a "window" and the fine assessed by the clerk from an existing scale approved by the judges of the court. Fines are accepted by mail in certain misdemeanor cases and set by the same scale.

"In the above said cases no solicitor's fee is assessed in most instances on the simple theory that no service has been rendered by the solicitor. In reviewing opinions of the Attorney General of the State on this point I find several back up this premise. When the prosecuting attorney either fails, refuses, or does not appear by himself or representative and prosecute the misdemeanor, no fee may be taxed by the court for his service, and he may not claim a fee as none is allowed. **Attorney General Rep. Vol. 35, pg. 18, 1944. Attorney General Rep. Vol. 38, pg. 16, 1945.**

"Each of the above opinions are written by Assistant Attorney General William McQueen, and after much review and case study he concludes that a fee for solicitors service may not be taxed unless the attorney actually appear and either prosecute, or be prepared to prosecute the case.

"A third opinion rendered by the **Attorney General in Vol 46, pg. 93, 1947,** by Attorney General A. A. Carmichael on this question states that no solicitors fee may be taxed where one is not provided in the Acts creating the court.

" 'A close perusal of Act No. 647, supra, creating the Jackson County Court fails to reveal any express provisions for solicitors fees at all. No reference is made to the applicability of solicitors fees under general law **(Title 11, Section 85, Code of Ala. 1940)**, nor are any solicitors fees enumerated in the local act itself. The law of costs and fees is held to be penal in nature, and no fee can be demanded which is not expressly authorized by law. See **Title 11, Sections 1 and 79, Code of Alabama 1940.**

> "An officer claiming fees must point out definite law authorizing them and such law may not be extended beyond its letter as the State may impose duties on public officers without providing compensation therefor.
>
> "'Act No. 647, supra, being completely silent as to solicitors fees, it is, therefore, my opinion that no such fees may attach. You are, therefore, advised that you as Clerk of the Jackson County Court may not assess such fees hereinabove discussed.' "The above opinion seems to make moot any question regarding the collection of solicitors fees by this court, as in the Act creating the court there is no solicitors fee set out, nor is there mention of the applicability of the general law regarding the collection of such fee in the costs of court. It would thus appear that not only does such a fee not attach on pleas of guilty to misdemeanor cases, but may not in fact attach in any case in the court within it's jurisdiction."

The question as presented by the Commissioner of Revenue is answered to the effect that it is my opinion that the solicitor's fee, as is provided for under Title 11, Sections 85 and 86, Code of Alabama 1940, Recompiled 1958, in misdemeanor cases, would be applicable only, regardless of the plea made by the defendant, where a solicitor or one of his assistants is present to prosecute the case or makes an actual appearance therein.

While this office was construing in the opinion dated February 6, 1945, and reported in Quarterly Report of the Attorney General, Vol. 38, page 16, the Act creating the Inferior Court of Ensley, namely, Act No. 193, Local Acts Extra Session 1932, page 76, and particularly Section 15 of that Act, the principles applied in that opinion seem equally applicable to the solicitor's fee as is provided for in misdemeanor cases under Title 51, Sections 85 and 86, supra.

> Section 15 of Act No. 193, supra, in material part reads, as follows:
>
> "There shall be taxed as a part of the costs in each misdemeanor case tried in said court a solicitor's' fee of $2.50 . . ."

Section 86 of Title 11, supra, under consideration here has very similar language and reads in material part as follows:

> "For each conviction for a misdemeanor in the county courts or inferior courts there shall be taxed as a part of the costs and paid into the county treasury the same solicitor's fees provided for conviction in such causes in circuit court . . ."

These material parts of said two statutes being considered, and as it appears that there is no material differences in their language, it would appear that the opinion of February 6, 1945, would apply equally as well to solicitor's fees as provided for in misdemaanor cases in county and inferior courts generally under Section 86 of Title 11.

The opinions of this office reported in Quarterly Report, Vol. 35, page 18, and in Biennial Report for 1934-1936, page 586, while applying the same principles as were applied in the opinion reported in quarterly Report, Vol. 38, page 16, were construing what is now, after being amended, Section 50 of Title 8, and which relates to violations under the Game and Fish Laws. That statute was somewhat different, in that it expressly required the solicitor to be present at the trial in the case of such violations.

The basis, however, for all of these opinions, as Mr. Chambers states, is the simple theory that as the solicitor or district attorney has rendered no services in such instances, that no solicitors fees have accrued. This appears to be a reasonable construction of these statutes and a sound one, in view of the doctrine that such statutes are to be strictly construed, as the taxing of costs and fees is said to be a form of punishment. **Troup v. Morgan County,** 109 Ala. 162, 16 So. 503, and **State v. Stone,** 233 Ala. 243, 171 So. 366.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

WILLIAM H. BURTON
Assistant Attorney General

February 4, 1974

Honorable James E. Arrington
Mayor
City of Jackson
Jackson, Alabama 36545

Municipalities — Contracts — Constitution — Officers and Officials — Governmental Immunity.

1. A municipality is not liable for the injuries caused in the wrongful or negligent performance of its governmental functions.

2. While a municipality is not subject to suit under 48 U. S. C. 1983, the officers and agents of the municipality are liable.

3. The Constitution of the United States requires that whenever a municipality places an individual in custody, the municipality must afford that individual adequate medical care.

4. Municipal corporations are liable in actions of implied assumpsit.

Opion by Assistant Attorney General Whetstone.

Dear Sir:

Your request for an official opinion bearing date of November 26, 1973, is as follows:

> "I respectfully request that you render the City of Jackson an opinion on the following question:
>
> "On many occasions, the Police Department of Jackson is summoned by telephone to an altercation where parties have been engaged in a fight. On some of these occasions, the officers find the parties drunk and have been hit with objects, and the injuries need and require medical attention. Prior to confining the parties to jail, the Police Department has on several occasions carried them to the local hospital for treatment.
>
> "Please advise me whether or not in these instances the City of Jackson would be responsible for their medical and hospital bills. These are not cases where the defendants are already in jail but where they are found at the scene to be injured and the City Police Department feels that it is necessary to have them examined by a doctor or their wounds treated prior to them being confined to jail. Some of the doctors have requested that the City pay the bills for their services and in some instances where the parties were severely injured would be a considerable amount."

A municipality is not liable for injuries caused, even for the wrongful or negligent performance of its governmental functions. **City of Bay Minette v. Quinley,** 263 Ala. 188, 82 So. 2d 192.

In investigating a claim and attempting to make an arrest, a police officer is performing a governmental function within his official capacity. **Hillman v. City of Anniston,** 214 Ala. 522, 108 So. 539.

In the present situation the injury was not caused by the police officer but by some third person.

The above considered, it is my opinion that the City of Jackson is not liable in tort for the injury sustained.

The true nature of your request, however, reveals that the liability which you may encounter is in the nature of a contract. This calls for a more far-reaching analysis.

The Congress of the United States in 1871 enacted a Civil Rights Act, now codified as 42 U. S. C. A. 1983, which provides:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in

an action at law, suit in equity, or other proper proceeding for redress."

While municipalities are not within the coverage of Section 1983, supra, **Fanburg v. City of Chattanooga,** 330 Fed. Supp. 1047, where the members of a city council, mayor and city manager are named as defendants, the federal court would have jurisdiction even though the municipality is not a person within the meaning of Section 1983. **Adams v. City of Colorado Springs,** 308 Fed. Supp. 1397, Affirmed 399 U. S. 901, 90 S. Ct. 2197, Rehearing Denied, 400 U. S. 855, 91 S. Ct. 25.

In **Newman v. Alabama,** 308 Fed. Supp. 278, the Court held that a failure to provide sufficient medical facilities and staff to afford inmates the basic elements of adequate medical care, constituted a willful and intentional violation of the rights of prisoners guaranteed under the 8th and 14th Amendments to the Constitution of the United States. This was in furtherance of the logic of the Court in **Wyatt v. Stickney,** 325 Fed. Supp. 781 which held that when the State incarcerated persons in mental institutions it must afford them adequate medical care.

In the fact situation submitted, the city officials have restrained the freedom of the individual involved and, in my opinion, must bear the constitutional burden imposed of providing adequate medical care while he remains in custody or suffer the possibilities of a federal suit under Section 1983, supra.

The city officials in the present case, however, have taken the individual in custody to a hospital. The question, therefore, boils down to the proposition as to whether there has been an implied contract between the City of Jackson, or any of its officials, and the doctors who have expended their services at the request of officials of the City.

The law is quite clear in Alabama that where a contract is not prohibited, municipal corporations are liable in actions of implied assumpsit respecting services received by them. **Morgan County v. Money,** 28 Ala. App. 514, 189 So. 773, Cert. Denied, 238 Ala. 149, 189 So. 775.

It is therefore entirely possible for the City of Jackson to have created an implied contract in the present situation. The question of whether an implied contract exists depends, in every case, on the particular facts involved.

The above considered, it is my opinion that if the facts warrant that an implied contract exists between the City of Jackson, or any of its officials, and the doctors who performed valuable services at their request, the City of Jackson may be liable for the value of the services rendered.

Trusting that this has sufficiently answered your questions, I am.

Very truly, yours,

WILLIAM J. BAXLEY
Attorney General

February 7, 1974

Honorable Howard E. Hendrix
Director, Alabama State
Department of Labor
Montgomery, Alabama 36104

The Director of the Department of Labor may appoint someone on his staff as a mediator in labor disputes when requested to do so by the parties involved in the controversy.

Opinion by Chief Assistant Attorney General, Walter S. Turner.

Dear Mr. Hendrix:

Your request for an official opinion of February 1, 1974 is as follows:

"I am attaching a copy of a letter requesting assistance in grievance procedure as prescribed in the agreement between the Birmingham Park and Recreation Board and Laborers International Union Local 1317.

"Will you render an opinion advising me if I may legally assign a staff member of this department to assist these folks in resolving a grievance of this nature?"

It is the opinion of this office that the Director of the Department of Labor is justified in appointing a mediator to settle labor disputes when requested to do so by the parties involved in the Controversy. Title 26, Section 280, Code of Alabama 1940, Recompiled 1958, states that it shall be the duty of the Director to "promote the peaceful and voluntary adjustment in the settlement" of labor disputes. It is, therefore, incumbent upon the Director to take whatever legal action he deems necessary to help resolve labor disputes.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

February 20. 1974

Mr. Fred E. Zeigler
Comptroller, State of Alabama
Department of Finance
State Capitol Building
Montgomery, Alabama 36104

For the purpose of paying attorneys for the defense of indigent defendants, there will no longer be any capital cases in Alabama.

Opinion by Chief Assistant Attorney General, Walter S. Turner.

Dear Mr. Zeigler:

Your request for an official opinion of November 1, 1973, is as follows:

> "In your opinion of December 21, 1971, addressed to Honorable Roy W. Sanders, State Comptroller, you advised that Act. No. 526, approved 1963 and amended by Act No. 2420, approved October 1, 1971, governs expenditures for attorney fees payable in non-capital cases. You also advised that Title 15, Section 318 of the Alabama Code 1940, as amended, governs the payments for attorney fees in capital cases.
>
> "We are having complaints from judges and attorneys appointed to defend indigent defendants about the amount of fees paid in capital cases. Their complaints are based on recent federal decisions which, in their opinion, have in effect repealed Section 318, Title 15 of the 1940 Code, as amended, and that there are no capital cases in Alabama.
>
> "Your opinion is requested to advise if there are capital cases in Alabama for which Title 15, Section 318 of the 1940 Code, as amended, would apply for determining fees to be paid to attorneys appointed to defend indigents. If your opinion is that there are no capital cases in Alabama and that Title 15, Section 318 of the Code of Alabama 1940, as amended, would not apply to the payment of attorney fees, please advise what laws should be applied in determining the amount of attorney fees when appointed to defend indigent defendants that were formerly classified as capital cases in the Code section.
>
> "I am holding several invoices requesting amounts in excess of the fees provided by Title 15, Section 318 of the Code of Alabama 1940, as amended, until I receive your opinion on this request."

In your letter of November 1, 1973, you requested an opinion regarding the laws which govern the payment of attorneys fees in criminal indigent cases. Specifically, your question concerned the Alabama Laws which differentiate between capital and noncapital cases where payment of attorneys fees is compared.

It seems that Title 15, Section 318 and 318 (3), Code of Alabama 1940, Recompiled 1958, provides for the possible payment of more money to a lawyer representing an indigent charged with a noncapital case than is provided for an attorney representing an indigent charged with a capital offense. There is no reason for this ridiculous anomaly to exist in our law. Nevertheless, it is there and attorneys have been burdened with it for a number of months.

It is our opinion that for the purpose of this particular statute, the distinction between capital and noncapital cases was abolished when the Supreme Court of the United States issued its opinion in **Furman v. Georgia,** 408 US 238 (1973). The Furman case prohibited the imposition or execution of the death penalty. Therefore, since capital punishment cannot be carried out, we must conclude that attorneys should be paid in all cases, including those that were formerly capital cases, exactly as provided in Title 15, Section 318 (3), Code of Alabama 1940, Recompiled 1958.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

February 21, 1974

Honorable Lambert C. Mims
Public Works Commissioner
City of Mobile
Post Office Box 1827
Mobile, Alabama 36601

An employee who is serving on jury duty must be paid his regular rate of pay by his employer minus pay for jury duty as set out under Title 30, Section 7, Code of Alabama, 1940, Recompiled 1958, when the employee's contract conflicts with this Alabama Code Section.

Opinion by Chief Assistant Attorney General, Walter S. Turner.

Dear Mr. Mims:

Your request for an official opinion of February 1, 1974, is as follows:

"In accordance with your correspondence to Mr. Pleza B. Watson, United Paperworkers International Union, dated December 28, 1973, I am requesting as Public Works Commissioner of the City of Mobile that the Office of the Attorney General furnish me with the information requested by Mr. Watson on December 12, 1973.

Mr. Watson's letter of December 12, 1973, read as follows: "On behalf of the members of our Union and all working people in Alabama, I request that you assist us in resolving a conflict that has occurred over the interpretation of Title 30, Section 7 (1), the Statute entitled an employee to receive compensation at his usual rate of pay while on jury duty, and a

provision in our contract with International Paper Company, Southern Kraft Division.

"As you know, Title 30, Section 7 (1), provides:

"'Upon receiving a summons to report for jury duty, an employee shall on the next day he is engaged in his employment exhibit the summons to his immediate superior and the employee shall thereupon be excused from his employment for the day or days required of him in serving as a juror in any court created by the constitutions of the United States or the State of Alabama. Notwithstanding the excused absence as herein provided, any full-time employee shall be entitled to his usual compensation received for such employment less the fee or compensation he received from serving as such juror. It shall be the duty of all persons paying jurors their fee or compensation for services to issue to each juror a statement showing the daily fee or compensation and the total fee or compensation received by the juror.'

"Article II (a) (10) of our Labor Agreement provides as follows:

"After a Worker has been absent from work (one day or less), at least two (2) hours' notice shall be given the Foreman or other duly designated person before the beginning of his next shift on which he intends to resume duty. After a prolonged absence from work (more than one day) all Workers, including Day Workers whose vacancies are filled by Tour Workers, shall give at least fifteen (15) hours' notice. Day Workers who are not replaced by Tour Workers shall give at least two (2) hours' notice. An employee shall have no job rights hereunder until such notice has been given and the stated time has elapsed.

"An employee whose jury duty extends beyond 5:00 p.m. in the afternoon, which is not usual in Mobile County, cannot give fifteen (15) hours' notice to the employer of his intention to return to work as required by the above quoted section of our Labor Agreement and the employer refused to allow the employee to return to work until this provision is compiled with. The result is that the employee loses a day pay where he is released from jury duty at an hour that prevents him from giving the fifteen (15) hours notice and the employer refused to compensate him for this lost time. It is our opinion, it is "required" as a result of his obligation to the court as a juror and constitutes an absence that results from jury duty for which he should be compensated.

"We request that you give us your opinion in this regard."

It is the opinion of this office that any worker or employee of any industry, public or private, no matter what the terms of the contract, must be paid under Title 30, Section 7 (1), for any time that

he missed from work minus pay he received for jury duty. The employee must be paid the regular rate of pay he would have received had he been able to work minus the jury pay. The contract referred to in Mr. Watson's letter does not destroy the effectiveness of the statute. If this were the case, employers could contract with employees in all phases of industry throughout the State of Alabama and subvert the intention and purpose of jury pay statutes completely. This is not to say that workers do not have to comply with the terms of their contract. In this particular case, workers should merely have to show their employers that they were unable to give the required notice because they were on jury duty. An employer who refuses to hear proof by an employee that the employee missed work because of jury duty, is leaving himself open to a lawsuit by the employee for money owed to the employee.

Our construction of the Statute certainly does not place any greater burden on an employer operating under a contract like the ones set out by Mr. Watson than an employer who requires no notice. It will be just simply a matter of the employee informing his employer that he could not give the required notice because he was serving on jury duty.

Sincerely,
WILLIAM J. BAXLEY
Attorney General

March 20, 1974

Honorable Bryan McAfee
Judge of Probate
Morgan County
P.O. Box 848
Decatur, Alabama 35601

Elections — Corrupt Practices Act—Candidate — Criminal Law — Lotteries.

A candidate may not award an automobile by chance to campaign contributors.

Opinion by Assistant Attorney General Stephens.

Dear Judge McAfee:

You have asked for our official opinion, concerning the following:

"If a candidate for a County, State or National Office owns an automobile, and gives each contributor of money, no matter the amount, to his campaign fund, a ticket as a chance to win such automobile at a drawing to be held the day after the election, is this legal, or is it in violation of Section 275, of Title 14, and Section 271 of Title 17, of the Code of Alabama, Recompiled, 1958, or of either of said Sections."

This practice would be in violation of Title 14, Section 275, and Title 17, Section 271, Code of Alabama 1940, Recompiled 1958. It might also be in violation of Title 17, Section 272, Code of Alabama 1940, Recompiled 1958.

Title 14, Section 275, Code of Alabama 1940, Recompiled 1958, prohibits the conduct of any lottery. A "lottery" is any plan or scheme by which persons pay a consideration for the chance of winning a prize when the prize is awarded by chance. The three elements of a lottery are: (1) a prize; (2) award by chance; and (3) payment of consideration for a chance. **Grimes v. State,** 235 Ala. 192, 178 So. 73. Each of the elements of a lottery is presented in the plan which you have described and that plan is clearly a lottery and illegal.

Also, Title 17, Section 271, Code of Alabama 1940, Recompiled 1958, lists the purposes for which a candidate may expend money in the conduct of his election campaign and provides that any other expenditure is a corrupt practice. In the plan which you have described, the award of the automobile to the holder of the drawn ticket must be considered an expenditure by the candidate. However characterized, such an expenditure is not within the listed permissible expenditures and is thus prohibited.

Moreover, Title 17, Section 272, Code of Alabama 1940, Recompiled 1958, limits the amount of money which a candidate may personally expend in the conduct of his election campaign. In the plan which you have described, the gift of the automobile must be considered an expenditure by the candidate and, depending upon the office which the candidate is seeking, the value of the automobile may exceed the candidate's personal expenditure limitation.

In summary, the plan which you have described is illegal under Title 14, Section 275, Title 17, Section 271, and may also be illegal under Title 17, Section 272, Code of Alabama 1940, Recompiled 1958.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 20, 1974

Honorable Elizabeth A. Cummings
Register
Circuit Court and Houston County Court
Dothan, Alabama 36301

Houston County — Registers — Alabama Rules of Civil Procedure.

Register may not charge commission on funds deposited with court pursuant to Rule 67 of the Alabama Rules of Civil Procedure.

Opinion by Assistant Attorney General Stephens.

Dear Mrs. Cummings:

In your recent letter you asked for an opinion by the Attorney General as follows:

> "This is to officially request an opinion or determination by your office, as to whether or not I am obligated to charge the stated commissions as set forth and described in said Title 11, Section 27, when said funds are specifically deposited in my office under the auspices of said Rule 67, Alabama Rules of Civil Procedure. Your attention and written opinion would be appreciated."

It is my opinion that you are not obligated to, and may not, charge any commission on funds deposited with the Court pursuant to Rule 67 of the Alabama Rules of Civil Procedure.

Rule 67, entitled "Deposit in Court," states:

> "In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Where money is paid into court to abide the result of any legal proceeding, the judge may order it deposited at interest in a federally insured bank or savings & loan association authorized to receive public funds, to the credit of the court in the action or proceeding in which the money was paid. **The money so deposited plus any interest shall be paid only upon the check of the clerk of the court, annexed to its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.**" (Emphasis added.)

Thus, this Rule makes no provision for the deduction of a Register's commission but, rather, provides that the money deposited plus interest be paid out to the appropriate party.

Without deciding whether these funds would otherwise fall within the provisions of Title 11, Section 27, it is sufficient to note that Rule 67 was adopted subsequently to Section 27 and that Act No. 1311, Regular Session, 1971, which provided for the adoption of the Rules of Civil Procedure, provides that:

> "Section 3. The said rules shall take effect six (6) months after their adoption by the Supreme Court, and **thereafter all in conflict therewith shall be of no further force or effect.** The said rules when adopted shall be known as the Alabama Rules of Civil Procedure." (Emphasis added.)

Therefore, Rule 67 of the Rules of Civil Procedure governs the

issue here in question and it does not permit the deduction of any commission from funds deposited pursuant to it.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 21, 1974

Honorable Glenn Murphy
Circuit Court Clerk
Lauderdale County
Florence, Alabama 35630

Circuit Courts — Clerks of Circuit Courts — Courts.
Circuit Court Clerk's Offices must be closed on State legal holidays.

Opinion by Assistant Attorney General Stephens.

Dear Mr. Murphy:

You have requested an opinion from this office as to whether Alabama Circuit Court Clerks' Offices must be closed on State legal holidays.

Each Circuit Court Clerk's Office **must** be closed on State legal holidays. The Circuit Court cannot provide by local rule or order that the Clerk's Office shall be open on State legal holidays.

This matter is governed by Rule 77 (c) of the Alabama Rules of Court. Rule 77 (c) provides, in relevant part:

> "(c) CLERK'S OFFICE AND ORDERS BY CLERK. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays but a circuit court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays observed by the United Stattes but not legal holidays of the State of Alabama . . ."

Title 39, Section 184, Code of Alabama 1940, Recompiled 1958, provides for the following State legal holidays: Sunday, Christmas Day, New Year's Day, Robert E. Lee's Birthday, George Washington's Birthday, Thomas Jefferson's Birthday, Mardi Gras, Confederate Memorial Day, Jefferson Davis' Birthday, the Fourth of July, Labor Day, Columbus Day, Fraternal Day, Veteran's Day and the day designated by the Governor for public Thanksgiving.

I hope and trust that this satisfactorily answers your question.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 22, 1974

Honorable Charles A. Boswell
Commissioner
Department of Revenue
Montgomery, Alabama 36102

Motor Vehicles — Licenses — Certificate of Title
The provisions of Act No. 765, Regular Session 1973, the certificate of title law, will first apply to motor vehicles designated as 1975 year models.

The provisions of Section 17 of Act No. 765 relating to scrapping, dismantling or destroying vehicles apply only to motor vehicles designated as 1975 year models and all models subsequent thereto which are required to be titled under Act No. 765, Regular Session 1973.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Boswell:

Your request for an opinion dated March 18, 1974 is as follows:
"Please give me your opinion in regard to Section 17, Act No. 765, Regular Session Legislature 1973, **The Alabama Uniform Certificate of Title and Antitheft Act.**

"' Section 17, Scrapping, Dismantling, etc.', does this section apply to:

"1. All vehicles scrapped, dismantled or destroyed regardless of age now in the hands of junk dealers, individuals, etc.?
"2. All vehicles scrapped, dismantled or destroyed since this Act was effective October 1, 1973?

"3. All vehicles scrapped, dismantled or destroyed that are 1975 model or subsequent year model vehicles are required to be titled under our Act?"

Section 2(a) of Act No. 765, Regular Session 1973 provides as follows:

"Section 2. Certificate of Title Required.

(a) Except as provided in Section 3 hereof, every owner of a motor vehicle designated a 1975 year model, and all models subsequent thereto which is in this State and which is required

to be registered under the motor vehicle laws of this State and for which no certificate of title has been issued by the Department, shall make application to a designated agent as herein defined for a certificate of title to the vehicle."

Section 17 of Act No. 765, supra, provides as follows:

"Section 17. Scrapping, Dismantling or Destroying Vehicle. An owner who scraps, dismantles or destroys a vehicle and a person who purchases a vehicle as scrap or to be dismantled or destroyed shall indicate same on the back of the certificate of title and shall within seventy-two (72) hours cause the certificate of title, the vehicle identification number plate, the motor vehcle license plate, and any other documents or information required by the Department to be mailed or delivered to the Department for cancellation. A certificate of title of the vehicle shall not again be issued except upon application containing the information the Department requires, accompanied by a certificate of inspection in the form and content specified in Section 5(d) hereof."

From the wording of Section 2 above, it is obvious that the certificate of title law is first applicable to motor vehicles designated as 1975 year models. Since no certificate of title will have been issued in accordance with Act No. 765, supra, for any motor vehicles whose model years are prior to 1975, Section 17 of Act No. 765 is applicable only to motor vehicles whose model year is 1975 and all models subsequent thereto.

Therefore, to answer your specific question, Section 17 of Act No. 765 does not apply to the vehicles referred to an paragraphs numbered 1 and 2 of your request but does apply to vehicles referred to in paragraph numbered 3.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 26, 1974

Honorable Jim Beech
Attorney
Jasper Utilities Board
First National Bank Building
Walker County
Jasper, Alabama 35501

Municipalities — Public Utilities.
1. The power of a public utility to charge for services is set by statute and cannot be controlled by city ordinance.

2. A municipal utility created pursuant to Title 37, Chapter 7, Article 7, Code of Alabama 1940, Recompiled 1958, can charge a reasonable amount for sewerage services even though the individuals charged are not connected to the public sewer line. Opinion by Assistant Attorney General Whetstone.

Dear Sir:

Your request for an official opinion bearing date of January 4, 1974, is as follows:

> "In my capacity as attorney for The Jasper Utilities Board, I am requesting an opinion in regard to the following matter.
>
> "I enclose herewith a copy of Ordinance No. 1961-2, wherein all persons who have houses, tenements, or other buildings located within the corporate limits of the City of Jasper, and any part of which is within 200 feet of a public sanitary sewer, are required to connect with the sewer, and other matters contained in the ordinance.
>
> "I also enclose a copy of Ordinance No. 1971-4, transferring and conveying the sewer system of the City of Jasper, Alabama, to The Jasper Utilities Board.
> "Our questions are as follows:
>
> "1. Can The Jasper Utilities Board collect a sewer service charge on persons who own or occupy houses, tenements, or other buildings which are located within the corporate limits of the city, and any part of which is within 200 feet of an existing public sanitary sewer, regardless of the fact that they have not connected with the said sanitary sewer system?
>
> "2. Are there any circumstances under which such persons would be exempt from the payment of a sewer service charge, other than the fact that the houses, tenements or buildings were located more than 200 feet from an existing public sanitary sewer?"

The Jasper Utility Board was created pursuant to Title 37, Chapter 7, Article 7, Code of Alabama 1940, Recompiled 1958. While this article defines the outside limits of the authority of the Board, the Board is not required to exercise all the authority which the Legislature permitted it to exercise. **Buffalow v. State ex rel. Inabinett,** 281 Ala. 132, 199 So. 2d 672.

The authority of the utility board to set sewerage rates is, in my opinion, given solely by statute and the power of the board to set rates cannot be controlled by municipal ordinance.

The above considered, it is my opinion that while a municipal governing body may require certain persons to connect with the public sewer, it is without authority to control who will be charged for sewerage service.

The Legislature gave wide powers to utility boards who incorporated under Article 7, supra. The Supreme Court of Alabama in **Campbell v. Water Works and Sanitary Sewer Board,** 270 Ala. 33, 115 So. 2d 519, interpreted Article 7, supra, and held that it was proper for a board to charge a fee for sewerage service on persons who were not connected to the public sewer.

This opinion, however, was based upon the concept that the Utility Board created under Article 7, supra, provides both water and sewerage service and if an individual was receiving either of these he could be charged as if he was receiving both, if the charges made by the public corporation were not unreasonable, arbitrary or discriminatory.

The above considered, it is my opinion that the Jasper Utilities Board may charge a fee for sewerage service from persons who are not connected to the public sewer so long as the persons involved are receiving some type of service from the Utility Board. The distance that persons are located from the public sewer would, in my opinion, be inconsequential.

Trusting this has sufficiently answered your questions, I am,

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 27, 1974

Honorable Otis MacMahon
District Attorney
Seventh Judicial Circuit
P.O. Box 2131
Anniston, Alabama 36201

Candidates — Corrupt Practices Act — District Attorneys — Elections.

1. A candidate for District Attorney may personally expend $3,000 (and in some cases, more than $3,000) in his campaign exclusive of expenditures for radio, television and newspaper advertising.

2. Employees of a District Attorney's Office are not prohibited by State law from political campaigning unless they are employed in the classified service of the State.

3. There is no limitation as to the amount of money which may be contributed to a political candidate.

4. Title 17, Section 285, Code of Alabama 1940, Recompiled 1958, prohibits campaigning on election day,

Opinion by Assistant Attorney General Stephens.

Dear Mr. MacMahon:

In your recent letter you have requested an opinion from the Attorney General's Office on several questions concerning the Alabama Corrupt Practices Act and other State election laws. I will restate and respond to each question separately.

> "1. Does Title 17, Section 272 of the Code of Alabama 1940 (Corrupt Practices Act) allow a candidate for District Attorney (State Office) to expend $3,000 in a political campaign and this **excludes** newspaper, radio, television and billboard advertising?"

A candidate for District Attorney may expend $3,000 of his personal funds for his political campaign. Moreover, if the total number of votes cast for governor in his judicial circuit in either the last preceding state primary or the last preceding state general election was more than five thousand votes, he may expend $3000 **plus** $10 per 100 votes cast in excess of five thousand votes.

These spending limitations do not apply to money spent for radio, television or newspaper advertising or to expenditures of funds contributed by other people.

> "2. Are employees of the District Attorney's Office prohibited in any way from engaging in the campaigning for the re-election of their employer in their off-duty time?"

Employees of a District Attorney's Office are not prohibited by state law from campaign activities unless they are employed in the classified service of the state. With respect to these employees under the state merit system. Title 55, Section 317, Code of Alabama 1940, Recompiled 1958, provides:

> "Section 317. Political activities prohibited.— * * * No employee in the classified service shall be a member of any national, state, or local committee of a political party, or an officer of a partisan political club, or a candidate for nomination or election to any public office, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. * * * *

This provision thus prohibits classified service employees from serving in any official or formal party or campaign capacity but does not prohibit such employees from privately expressing personal support for a candidate.

Some counties and municipalities have similar employee merit system restrictions which may apply to employees of a particular District Attorney's Office.

"3. Is there a maximum limitation as to the amount of money that can be contributed to a political candidate?"

There is no maximum limitation on the amount of money which may be contributed to, and expended by, a candidate's campaign committee except for the limitation upon the amount which the candidate himself may personally contribute. There are ,however, limitations upon the sources of contributions permitted. See Title 17, Section 286, Code of Alabama 1940, Recompiled 1958.

"4. Please cite the appropriate code section regarding the last date and hour a campaign may be conducted prior to the primary election and general elections?"

Title 17, Section 285, Code of Alabama 1940, Recompiled 1958, prohibits all electioneering or solicitation of votes on election day, i.e., later than 12 o'clock midnight on election day eve. However, the United States Supreme Court has held at least a part of Section 285 unconstitutional, **Mills v. Alabama,** 384 U.S. 214 (1966). Unfortunately, the breadth and extent of the Supreme Court's ruling is not clear from the Court's opinion. Consequently, it is unclear whether or not the Section 285 prohibition against campaigning on election day is constitutional. In the absence of a clear determination of this matter, I recommend that candidates refrain from campaigning on election day.

I hope and trust that this satisfactorily answers your questions. If I may be of further assistance to you, please do not hesitate to call or write to me.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 28, 1974

Honorable Barry N. McCrary
Dixon, Wooten, Boyett & McCrary
Attorney at Law
223 W. North Street
Talladega, Alabama 35160

City Employment Policy — Bankruptcy — Equal Protection of the Laws.

A city cannot enforce an employment policy which discriminates against persons who have been adjudicated a bankrupt or who have applied for such an adjudication.

Opinion by Chief Assistant Attorney General Turner.

Dear Mr. McCrary:

Your request for an official opinion of February 5, 1974, is as follows:

> "Our firm represents the City of Talladega. The Police Department of the City of Talladega is presently trying to upgrade the department and improve its public image. The question of whether or not the City can impose and enforce an employment policy against employing persons who have recently been adjudicated a bankrupt or who have applied for an adjudication has arisen. We would appreciate an Attorney General's opinion on this question."

It is our opinion that such an employment policy would violate the Equal Protection Clause of the 14th Amendment of the United States Constitution. In the recent United States Supreme Court case of **Reed v. Reed,** 404 US 71, (1971), the Court stated that the Equal Protection Clause does not deny to states the power to treat different classes of persons in different ways. However, the court went on to say that discriminatory treatment must not be based on criteria wholly unrelated to the objective of the statute. The court cites the case of **Royster v. Virginia,** 253 U.S. 412 (1920), which held that statutory classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

It is obviously the purpose of the City of Talladega to eliminate from its police force individuals whose financial dealings have been unethical. This is a commendable effort and, certainly, employment policies which eliminate these individuals are proper. Nevertheless, it is obvious that everyone who is adjudicated a bankrupt is not necessarily an unethical individual. The courts have often recognized this, and in the case of **In Re Hicks** 133 F. 739, a United States District Court discussed this problem at length:

> "If a bankrupt surrenders his property and complies with all the conditions of the Act, and places himself within its provisions, he is entitled to his discharge; and no state court or state law or municipal ordinance, under any guise or pretense whatever, can deprive the bankrupt of the benefits the national law says shall accrue to him; nor can any state, state court, municipal body or municipal ordinance inflict any penalty or punishment directly or indirectly upon the bankrupt for failing to pay the debts in full, for which the national law says he shall be discharged. Neither can any state, state or municipal law or ordinance, say that to take advantage of the National Bankruptcy Act is an act affecting either the character of the conduct or capacity of a citizen, so far as they relate to his right and capacity to continue in or to hold a public office or position created either by the federal government or by a state.

> To permit this would be to allow a state to punish one of its citizens for taking advantage of the benefits of the National Law, the justice and beneficence of which; no state or municipal law is permitted to question."

Although the City of Talladega is to be commended for an employment policy which would insure honest law enforcement officials, we do not feel that the policy you ask about will achieve that purpose. The policy would punish any and all individuals seeking public employment in Talladega simply because they chose to take advantage of the Federal Bankruptcy Act.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

INFORMAL OPINIONS

During the period January 1, 1974 through March 31, 1974, the Attorney General rendered the following informal opinions. These are not published in the Quarterly Report.

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Subsistence Allowance	Henry Gray	Jan. 16	ABC Board
Law Enforcement Fund	Henry Gray	Mar. 26	ABC Board
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Act 1000-Limitation	James Witherington	Jan. 9	64
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Greensboro Lions Club—Not Exempt	Willard Christenberry	Mar. 1	215
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Mental Health Center—Dale County Hospital	B. F. Williams	Feb. 27	102
Mobile Greyhound Park—Not Exempt	Maurice Downing	Feb. 25	1
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ALABAMA DEVELOPMENT OFFICE			
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ALABAMA HOUSE OF REPRESENTATIVES			
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Eligibility—Monette Curtis	Virginia Bryant	Feb. 25	APO
Act 1210 Benefits	Virginia Bryant	Feb. 12	APO
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